

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHENIQUA T.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C24-860-MLP

ORDER

I. INTRODUCTION

Plaintiff seeks review of the denial of her application for Supplemental Security Income and Disability Insurance Benefits. The parties agree that the ALJ's decision is not supported by substantial evidence and should be remanded, but disagree on the nature of the remand. Plaintiff argues for a finding of disability and award of benefits (dkt. ## 12, 18), while the Commissioner contends remand for further proceedings is the proper remedy. (Dkt. # 17.) Having considered the ALJ's decision, the administrative record ("AR"), and the parties' briefing, the Court REVERSES the Commissioner's final decision and REMANDS the matter for an award of benefits under sentence four of 42 U.S.C. § 405(g).¹

¹ The parties consented to proceed before the undersigned Magistrate Judge. (Dkt. # 2.)

II. BACKGROUND

Plaintiff was born in 1979, has a high school education, and previously worked as a customer service scheduler, taxi dispatcher, and property clerk. AR at 211, 1065-66. Plaintiff was last gainfully employed before January 1, 2018. *Id.* at 1056.

In October 2019, Plaintiff applied for benefits, alleging disability as of January 1, 2018, which she later amended to December 1, 2019. AR at 211-23, 242. Her applications were denied initially and on reconsideration, and she requested a hearing. *Id.* at 102-29. After conducting a hearing in March 2021, the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 12-29. The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the Commissioner's final decision. *Id.* at 1-6. Plaintiff appealed the final decision of the Commissioner to this Court. *Id.* at 1131-32.

In July 2022, this Court reversed the ALJ's decision and remanded the case for further proceedings with instructions for the ALJ to reassess the opinion of Plaintiff's treating nurse practitioner and Plaintiff's testimony. AR at 1133-44, 1171. Following hearings in June 2023 and January 2024, the ALJ issued another unfavorable decision. *Id.* at 1050-76.

Using the five-step disability evaluation process,² the ALJ found, in pertinent part, that based on Plaintiff's substance abuse, Plaintiff met the criteria of Listing 12.04. AR at 1057-59. However, the ALJ found that if Plaintiff stopped using substances, she would not meet or equal a listing, and her limitations would not prevent her from performing other work in the national economy. *Id.* at 1057, 1061-62, 1066-67. This appeal followed. (Dkt. # 4.)

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² 20 C.F.R. §§ 404.1520, 416.920.

III. LEGAL STANDARDS

Under 42 U.S.C. § 405(g), this Court may overturn the Commissioner’s denial of social security benefits if the ALJ’s decision rests on legal error or is not supported by substantial evidence. *Smartt v. Kijakazi*, 53 F.4th 489, 494 (9th Cir. 2022). Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 587 U.S. 97, 102-03 (2019) (cleaned up). In applying this standard, the Court must consider the record as a whole to determine whether it contains sufficient evidence to support the ALJ’s findings. *Id.*

Although the Court evaluates the record as a whole, it is not permitted to reweigh the evidence or substitute its judgment for that of the ALJ. *Ahearn v. Saul*, 988 F.3d 1111, 1115 (9th Cir. 2021). The ALJ is tasked with evaluating testimony, resolving conflicts in the medical evidence, and addressing ambiguities in the record. *Smartt*, 53 F.4th at 494-95. Where the evidence can be interpreted in more than one rational way, the ALJ’s decision must be upheld. *Id.* Even if the ALJ erred, reversal is not warranted unless the error affected the outcome of the disability determination. *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020). The party challenging the ALJ’s decision bears the burden of demonstrating harmful error. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009).

IV. DISCUSSION

A. The Proper Remedy is Remand for Further Proceedings

Plaintiff argues that the ALJ’s mishandling of Dr. Laura Hopper’s opinion compels an award of benefits. (Dkt. ## 12 at 5, 18 at 2-4.) Remand for an award of benefits “is a rare and prophylactic exception to the well-established ordinary remand rule.” *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th Cir. 2017). To determine whether such an award is appropriate, the Court

1 applies a three-factor test: (1) did the ALJ fail to provide legally sufficient reasons for rejecting
2 evidence; (2) are there any outstanding issues to resolve before determining disability; and (3)
3 would the ALJ need to find the claimant disabled if the rejected evidence were credited as true.
4 *See Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014).

5 In this case, all three prongs of the *Garrison* test are satisfied. The ALJ deemed Dr.
6 Hopper's opinion "significantly" persuasive, citing its consistency with all of the medical
7 evidence available up to the date of the decision. AR at 1063. Dr. Hopper testified that even
8 during sober periods, Plaintiff would be off-task 12 to 20% of the time and would miss one to
9 two workdays each month. *Id.* at 1116-17, 1121. A vocational expert ("VE") corroborated that
10 these limitations would prevent competitive employment. *Id.* at 1128-29. Still, the ALJ offered
11 no explanations to justify the rejection of Dr. Hopper's evaluations concerning Plaintiff's
12 limitations or the relevance of Drug Addiction or Alcoholism ("DAA"). *Id.* at 1061-63. The
13 ALJ's error in this regard is evident and the record does not establish serious doubt that Plaintiff
14 is in fact disabled.

15 In reviewing the ALJ's decision, the Court must rely on the reasons discussed by the ALJ
16 and may not fashion reasons on its own to affirm. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir.
17 2017). Although the Commissioner contends it is unclear whether the ALJ intended to adopt Dr.
18 Hopper's opinion of Plaintiff's off-task behavior (dkt. # 17 at 5), the record reflects otherwise.
19 The ALJ sought Dr. Hopper's testimony and found it persuasive due to its alignment with the
20 longitudinal record. AR at 1061-63. The Court rejects the Commissioner's invitation to
21 scrutinize the ALJ's decision and fabricate findings that contradict the ALJ's explicit
22 conclusions. *Bray v. Comm'r of Soc. Sec.*, 554 F.3d 1219, 1225 (9th Cir. 2009) (the court
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1 reviews the ALJ’s decision “based on the reasoning and findings offered by the ALJ—not post
2 hoc rationalizations that attempt to intuit what the adjudicator may have been thinking.”).

3 The Commissioner further claims that significant questions surrounding DAA remain
4 unresolved among the medical opinions. (Dkt. # 17 at 5-10.) But Drs. Leslie Postovo and Bruce
5 Eather asserted that DAA was irrelevant to the disability determination. AR at 74, 83, 93, 101.
6 Likewise, Dr. Majid Azzedine acknowledged Plaintiff’s substance use but attributed no
7 significant functional impairments to it, *id.* at 2326-27, and ARNP Molly Davenport’s evaluation
8 explicitly noted that “any limitations due to current alcohol or drug use” were excluded from her
9 assessment. *Id.* at 1046-49. Collectively, these medical opinions reflect a broad consensus among
10 Plaintiff’s healthcare providers that substantial impairments exist without the influence of DAA.

11 Finally, the Commissioner argues that further proceedings are necessary for the ALJ to
12 evaluate Plaintiff’s testimony and the lay witness statements. (Dkt. # 17 at 10-14.) This argument
13 is not persuasive. The ALJ assigned significant weight to Dr. Hopper’s opinion, noting that it
14 was consistent with the overall record. AR at 1061-63, 1116-17, 1121. A VE confirmed that the
15 limitations identified by Dr. Hopper precluded competitive employment. *Id.* at 1128-29. These
16 factors alone establish Plaintiff’s disability status without further need to assess Plaintiff’s
17 testimony or the lay witness statements.

18 The “exceptional facts” of this case strongly favor remand for immediate payment of
19 benefits. *Terry v. Sullivan*, 903 F.2d 1273, 1280 (9th Cir. 1990). Plaintiff applied for benefits
20 more than five years ago, asserting a disability stemming from multiple impairments that
21 significantly hinder her abilities, with ample corroboration from the longitudinal record. The ALJ
22 found Dr. Hopper’s opinion credible and provided no rationale for discounting it. The record is
23 complete and the ALJ has already had two opportunities to evaluate Plaintiff’s claims.

1 “The Commissioner is not entitled to repeatedly bounce a case back and forth between
 2 the different levels of reviewing tribunals until he eventually applies the proper legal standards to
 3 Plaintiff’s claims; fairness demands an expeditious review process.” *Davis v. Saul*, 2020 WL
 4 3060415, at *5 (N.D. Cal. June 9, 2020).³ Under these circumstances, granting the
 5 Commissioner a third opportunity to meet his burden would perpetuate the very “heads we win;
 6 tails, let’s play again” disability benefits system that the Ninth Circuit has consistently warned
 7 against. *See Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004). “[F]urther delays at this
 8 point would be unduly burdensome.” *Trevizo v. Berryhill*, 871 F.3d 664, 682-83 (9th Cir. 2017).⁴

9 In sum, the Court finds no justification to exercise its discretion to mandate yet another
 10 hearing. The overwhelming evidence supports an immediate award of benefits. Thus, the proper
 11 remedy is a remand for an immediate award, ensuring that Plaintiff receives the benefits to which
 12 she is entitled without further unnecessary delay.

13 V. CONCLUSION

14 For the foregoing reasons, the Commissioner’s final decision is REVERSED and this
 15 case is REMANDED for an award of benefits under sentence four of 42 U.S.C. § 405(g).

16 Dated this 2nd day of January, 2025.

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18 MICHELLE L. PETERSON
 19 United States Magistrate Judge

20 ³ See also *Kaskie v. Comm’r of Soc. Sec.*, 2024 WL 4524188, at *4 (D. Ariz. Oct. 18, 2024) (rejecting
 21 argument that remand for a third time was needed to properly evaluate medical opinions and granting
 22 benefits); *K.J. v. Kijakazi*, 2024 WL 2113861, at *9 (N.D. Cal. May 6, 2024) (same); *Garcia v. Comm’r*
of Soc. Sec., 2024 WL 1886569, at *13 (E.D. Cal. April 30, 2024) (“Allowing the ALJ a ‘redo’ would
 only grant the ALJ an unwarranted do over and punish” Plaintiff) (internal citation omitted).

23 ⁴ See also *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996) (remanding for benefits where the
 claimant “waited over seven years for her disability determination.”); *Terry*, 903 F.2d at 1280 (granting
 benefits where claimant applied for benefits four years prior, despite lack of development regarding a
 possible job).